

HOUSE BILL REPORT

2SHB 1052

As Amended by the Senate

Title: An act relating to firearm licenses for persons from different countries.

Brief Description: Concerning firearm licenses for persons from other countries.

Sponsors: House Committee on General Government Appropriations (originally sponsored by Representatives Moeller, Williams, Blake, Chase and Kretz).

Brief History:

Committee Activity:

Judiciary: 1/15/09, 1/29/09 [DPS];

General Government Appropriations: 2/10/09, 2/17/09 [DP2S(w/o sub JUDI)].

Floor Activity

Passed House: 3/3/09, 97-0.

Senate Amended.

Passed Senate: 4/7/09, 45-0.

Brief Summary of Second Substitute Bill

- Repeals the current alien firearm license statute and establishes new requirements and procedures governing possession of firearms by non-citizens.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Flannigan, Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

Staff: Edie Adams (786-7180)

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Judiciary. Signed

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

by 13 members: Representatives Darneille, Chair; Takko, Vice Chair; McCune, Ranking Minority Member; Armstrong, Blake, Dunshee, Hudgins, Kenney, Pedersen, Sells, Short, Van De Wege and Williams.

Staff: Alex MacBain (786-7288)

Background:

Alien Firearm Licenses.

It is a class C felony for a person who is not a citizen of the United States to possess a firearm in Washington unless the person has obtained an alien firearms license from the Department of Licensing (DOL). Based on the language in the alien firearm license statute and the requirements of federal law, the DOL has interpreted the alien firearms license statute to allow only those non-citizens who are residents of Washington to obtain an alien firearms license.

To obtain an alien firearms license, the applicant must meet the following requirements:

- provide proof that he or she is lawfully present in the United States;
- provide from the applicant's consulate domiciled in this state: (a) a certified copy of the applicant's criminal history in the applicant's home country; and (b) an attestation that the applicant is a responsible person; and
- undergo a background and fingerprint check conducted by the local law enforcement agency where the applicant resides to determine his or her eligibility to possess a firearm.

The criminal history and attestation of responsibility from the applicant's consulate is not required if the applicant has resided within Washington for at least two years and either the applicant is from a country that does not have a consulate domiciled in this state or the consulate has failed to provide the required criminal history and attestation of responsibility within 90 days of the request.

An alien firearm license is valid for a period of five years. An applicant for an alien firearm license must pay a fee of \$55 to the DOL plus additional charges imposed by the Federal Bureau of Investigation (FBI) that are passed on to the applicant. The DOL must distribute the fee as follows: \$15 to the DOL; \$25 to the Washington State Patrol; and \$15 to the local law enforcement agency conducting the background check.

A Canadian citizen is exempt from the requirements of the alien firearm license statute if the Canadian citizen possesses the firearm for the purpose of hunting or competing in a bona fide trap or skeet shoot or other organized event where firearms are used, and if the Canadian citizen lives in a province that provides similar privileges to Washington residents.

The statute governing requirements for obtaining a concealed pistol license provides that a concealed pistol license may be issued to a person who is not a citizen of the United States only if the applicant meets the requirements of the alien firearm license statute.

The DOL Issuance of Alien Firearm Licenses.

The DOL is responsible for issuing the alien firearm license after verifying that the applicant meets the requirements of the statute, including the required background check conducted by local law enforcement. In 2006 the FBI determined that the secondhand dissemination of federal background check data to the DOL violates federal law because the DOL is not a criminal justice agency. As a consequence, the DOL has not been issuing alien firearm licenses due to the inability to comply with the statute's background check requirements.

Federal Law.

The federal Gun Control Act generally prohibits aliens admitted to the United States under non-immigrant visas from importing firearms into or possessing firearms within the United States. There is an exception for those non-immigrant aliens who are either admitted to the United States for lawful hunting or sporting purposes or in possession of a hunting license lawfully issued in the United States.

The definition of "non-immigrant alien" under federal law encompasses persons who have been granted the right to travel or temporarily reside in the United States (e.g., foreign students and foreign workers). Permanent resident aliens and persons in the United States under asylum or refugee status are not non-immigrant aliens.

A non-immigrant alien who wishes to import a firearm or ammunition into the United States for the purpose of lawful hunting or sporting events must fill out and have approved the Application and Permit for Temporary Importation of Firearms and Ammunition for Nonimmigrant Aliens (ATF Form 6NIA). In order to obtain approval for an ATF Form 6NIA permit, the non-immigrant alien must possess either: a valid hunting license issued by a state; or an invitation or registration to attend a "competitive target shooting event or sports or hunting trade show sponsored by a national, state, or local organization devoted to the collection, competitive use, or other sporting use of firearms."

Summary of Second Substitute Bill:

The alien firearm statute is repealed and new requirements for the possession of firearms by non-citizens are established.

The prohibition on a non-citizen's possession of a firearm without an alien firearm license only applies to non-immigrant aliens. A non-citizen who is not a non-immigrant alien (e.g., a permanent resident alien) is no longer subject to a criminal penalty for possessing a firearm without having obtained an alien firearm license.

Non-immigrants Residing in Washington.

It is a class C felony for a non-immigrant alien residing in Washington to carry or possess any firearm without having an alien firearm license. An applicant for an alien firearm license may apply to the county sheriff where he or she resides, and the sheriff has 60 days to issue the license. The license allows the applicant to carry or possess a firearm for the purpose of hunting and sport shooting, and it expires two years after issuance or when the person permanently leaves the state. An applicant for an alien firearm license must submit a copy of

a passport and visa showing that the applicant is in the country legally and a valid Washington hunting license or documentation that the applicant is a member of a sport shooting club.

The county sheriff must conduct a fingerprint-based background check through the National Crime Information Center, the Washington State Patrol (WSP), the Department of Social and Health Services databases, and other appropriate agencies, to determine whether the applicant is ineligible to possess a firearm under state law.

The license must be in a form established by the Department of Licensing (DOL). One copy of the license must be sent to the DOL and the county sheriff issuing the license must retain a copy for six years. The fee for the license is \$50, plus additional charges imposed by the WSP and the FBI that are passed on to the applicant. The fee is retained by the county sheriff issuing the license.

Non-immigrants Who Do Not Reside in Washington.

It is a class C felony for a non-immigrant alien who is not a resident of Washington to carry or possess a firearm in Washington unless he or she possesses: a valid passport and visa, or in the case of a Canadian citizen, valid documentation for entry into the United States; an approved Department of Treasury ATF Form 6NIA application and permit, if required under federal law; and a valid hunting license or an invitation to participate in a trade show or sport shooting event.

Other Provisions.

Law enforcement agencies and other entities are provided immunity for activities associated with the issuance or denial of an alien firearm license.

The concealed pistol license statute is amended to reference alien firearm licenses created by the act. A person who is not a citizen of the United States has to comply with the requirements of the alien firearm statute, if applicable, in order to obtain a concealed pistol license.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment defines the terms “non-immigrant alien” and “lawful permanent resident” by referencing the definitions of these terms in the federal immigration law and restructures the alien firearm license provisions to retain current law that it is a crime for an illegal alien to possess a firearm in Washington. The Senate amendment provides that non-immigrants who do not reside in Washington may possess firearms only for the purposes of using them for the hunting of game or for a bona fide trap or skeet shoot or any other organized contest where rifles, pistols, or shotguns are used. The Senate amendment provides that the alien firearm license is good for two years (rather than for two years or until the person permanently leaves the state) and makes a number of other clarifying and technical amendments, including: provides a specific statement of authority for the sheriff to collect a license fee; replaces references to the denial of the “privilege to bear arms” with

denial of “an application for a license;” and replaces references to “issuing authority” with references to “the sheriff.”

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Judiciary):

(In support) This bill is the product of many years of work to remove the barriers that the alien firearm license has created for hunting guide businesses that want to bring international hunters to this state. Many international hunters from a variety of countries have been turned away because of the current law. In these tough economic times, many hunting guide businesses are barely surviving. This bill will allow our hunting guide businesses to bring to Washington international hunters, who tend to spend a fair amount of money, which will be beneficial to the state economy.

The bill also solves the problem that the DOL has had the last two years of being ordered by state law to issue a license that they cannot issue. People who applied for the license have been refunded their money and they are on hold until the problem is solved.

(With concerns) County sheriffs have some concerns with the current language but we believe those will be addressed with amendments. Those two concerns are the increased cost associated with shifting the responsibility for issuing this license to the county sheriff and the potential liability for sheriffs associated with issuing the license.

The bill should clarify that persons coming from out of the country will need a non-resident hunting license, which costs more than the resident hunting license. There are some people who come to the country without importing a firearm so there should be a process for them to possess a firearm without having to obtain the ATF Form 6NIA.

The Washington State Patrol sets fees for background checks in rule according to a fee study. This amount can change over time, so it would be helpful to amend the bill to address this issue.

Staff Summary of Public Testimony (General Government Appropriations):

(In support) This bill is the product of many years of work to remove the barriers that the alien firearm license has created for hunting guide businesses that want to bring international hunters to this state. Over the past two years, the Department of Fish and Wildlife has had to turn away many international hunters seeking alien permits because they could not lawfully use a firearm for hunting in this state. Every non-resident hunting license generates \$660 to the state, not to mention other money that might be spent on goods and services in this state by those hunters.

There is a provision that requires a federal ATF form 6 in order to obtain an alien permit. The ATF form 6 is required for importing and transporting a firearm. There may be circumstances in which the alien seeking the permit could be using the gun of a legal resident to hunt with and therefore would not have obtained the ATF form 6. A technical change to account for those not using the ATF form 6 would make a lot of sense.

(Opposed) None.

Persons Testifying (Judiciary): (In support) Representative Moeller, prime sponsor; Ed Owens, Hunters' Heritage Council; Pat Brown, Washington Department of Licensing; and Mik Mikitik and Steve Crown, Washington Department of Fish and Wildlife.

(With concerns) Jeff DeVere, Washington State Patrol; and Jo Arlow, Washington Association of Sheriffs and Police Chiefs.

Persons Testifying (General Government Appropriations): Rep Moeller, prime sponsor; Ed Owens, Hunters Heritage Council and National Rifle Association; and Mik Mikitik, Washington Department of Fish and Wildlife.

Persons Signed In To Testify But Not Testifying (Judiciary): None.

Persons Signed In To Testify But Not Testifying (General Government Appropriations): None.